

AMENDED IN ASSEMBLY APRIL 12, 2004

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN ASSEMBLY JUNE 10, 2003

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE MARCH 18, 2003

SENATE BILL

No. 12

Introduced by Senator Bowen

~~(Coauthors: Senators Ducheny, Kuehl, Machado, Ortiz, Perata,
Romero, Scott, Soto, Torlakson, and Vasconcellos)~~

~~(Coauthors: Assembly Members Chan, Hancock, Jackson, Leno,
Leslie, Longville, Nation, Pavley, Vargas, Wolk, and Yee)~~

December 2, 2002

~~An act to amend Section 17538.45 of, to add Article 1.8
(commencing with Section 17529) to Chapter 1 of Part 3 of Division
7 of, and to repeal Section 17538.4 of, the Business and Professions An
act to amend Section 17529.8 of the Business and Professions Code,
relating to advertising.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Bowen. Electronic mail advertising.

Existing state law prohibits a person or entity from collecting e-mail addresses or registering multiple e-mail addresses for purposes of the initiation or advertisement in an unsolicited commercial e-mail advertisement sent from California or to a California e-mail address. Existing state law also prohibits a person or entity from advertising in a commercial e-mail advertisement that is sent either from California

or to a California e-mail address if the e-mail contains certain falsified, misrepresented, obscured, or misleading information. Existing state law authorizes the recipient of an unsolicited commercial e-mail advertisement transmitted in violation of these prohibitions, the e-mail service provider, or the Attorney General to bring an action to recover actual damages, and authorizes a court to award reasonable attorney's fees and costs to a prevailing plaintiff.

This bill would instead authorize the recipient of any e-mail advertisement transmitted in violation of these prohibitions, the e-mail service provider, or the Attorney General to bring an action to recover actual damages and liquidated damages of \$1,000 per e-mail advertisement transmitted in violation of these provisions, up to \$1,000,000 per incident, subject to reduction by the court, and would authorize the award of reasonable attorney's fees and costs to a prevailing plaintiff.

~~Existing law prohibits a person or entity conducting business in the state from e-mailing or causing to be e-mailed documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity establishes a toll-free telephone number or valid sender-operated return e-mail address that a recipient may contact to notify the sender not to e-mail the recipient any further unsolicited documents. Existing law requires that notification of the toll-free telephone number, and a valid address that a recipient may write to, be included on all unsolicited e-mailed documents, as specified, and prohibits the e-mailing of any unsolicited documents to a person who has requested not to receive any further unsolicited documents. Existing law requires unsolicited e-mail advertisements to contain a heading of "ADV:" or "ADV:ADLT," as specified.~~

~~This bill would delete these provisions and would instead prohibit a person or entity from initiating an unsolicited commercial e-mail advertisement either from California or to a California electronic mail address. The bill would also make it unlawful for a person or entity to collect or use electronic mail addresses or to register for multiple electronic mail accounts for the purpose of initiating the transmission of unsolicited commercial e-mail advertisements from California or to a California e-mail address.~~

~~This bill would prohibit a person from initiating transmission of a commercial e-mail advertisement either from California or to a California e-mail address where the advertisement (1) contains or is~~



~~accompanied by a 3rd party's domain name without permission, (2) contains or is accompanied by falsified, misrepresented, obscured, or forged header information, or (3) has a misleading subject line.~~

~~This bill would authorize the recipient of a commercial e-mail advertisement transmitted in violation of any of these provisions or the electronic mail service provider to bring an action to recover the greater of actual damages or \$500 per individual violation, up to a maximum amount of \$50,000 per day, and reasonable costs and attorney's fees. The bill would also impose a civil penalty of \$250 for each individual violation, to be paid to the High Technology Theft Apprehension and Prosecution Program Trust Fund. The bill would authorize the court to increase the award to up to triple this amount if the violation was willful or knowing. The bill would provide that any cause of action in existence prior to its enactment would not be affected by the act and would be governed by the law in effect at the time it arose.~~

~~Existing law prohibits a registered user of an electronic mail service provider, as defined, from using or causing to be used the provider's equipment located in this state in violation of the provider's policy prohibiting or restricting the use of its equipment for the initiation of unsolicited electronic mail advertisements. Existing law prohibits an individual, corporation, or other entity from using or causing to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of the provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users. Existing law authorizes an electronic mail service provider whose policy is violated to bring a civil action to recover specified damages, but requires the provider to establish as an element of the cause of action that the defendant had actual notice, prior to the violation, of the provider's policy and that the advertisements would use or cause to be used the provider's equipment located in this state.~~

~~This bill would delete the above prohibitions and instead prohibit a person who has been given notice by an e-mail service provider of its policies regarding unsolicited commercial e-mail advertisements from using a computer, computer network, or the computer services of the provider to initiate the transmission of an unsolicited commercial e-mail advertisement from California or to a California e-mail address in violation of those policies. The bill would delete the requirement that a provider bringing an action for a violation of its policies establish that the defendant had actual notice, prior to the violation, of the provider's~~



~~policies and that the advertisements would use, or cause to be used, the provider's equipment located in this state. The bill would authorize an electronic mail service provider whose policy is violated to recover in a civil action \$500 for each violation up to a maximum of \$200,000 per day.~~

~~A violation of the provisions governing advertising is a misdemeanor. Because a violation of the provisions of this bill would be a crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Article 1.8 (commencing with Section 17529)~~
- 2 *SECTION 1. Section 17529.8 of the Business and Professions*
- 3 *Code is amended to read:*
- 4 17529.8. (a) (1) In addition to any other remedies provided
- 5 by this article or by any other provisions of law, a recipient of an
- 6 ~~unsolicited commercial~~ e-mail advertisement transmitted in
- 7 violation of this article, an electronic mail service provider, or the
- 8 Attorney General may bring an action against an entity that
- 9 violates any provision of this article to recover either or both of the
- 10 following:
- 11 (A) Actual damages.
- 12 (B) Liquidated damages of one thousand dollars (\$1,000) for
- 13 each ~~unsolicited commercial~~ e-mail advertisement transmitted in
- 14 violation of ~~Section 17529.2~~ *this article*, up to one million dollars
- 15 (\$1,000,000) per incident.
- 16 (2) The recipient, an electronic mail service provider, or the
- 17 Attorney General, if the prevailing plaintiff, may also recover
- 18 reasonable attorney's fees and costs.
- 19 (3) However, there shall not be a cause of action against an
- 20 electronic mail service provider that is only involved in the routine

1 transmission of the ~~unsolicited commercial~~ e-mail advertisement
2 over its computer network.

3 (b) If the court finds that the defendant established and
4 implemented, with due care, practices and procedures reasonably
5 designed to effectively prevent ~~unsolicited commercial~~ e-mail
6 advertisements that are in violation of this article, the court shall
7 reduce the liquidated damages recoverable under subdivision (a)
8 to a maximum of one hundred dollars (\$100) for each ~~unsolicited~~
9 ~~commercial~~ e-mail advertisement, or a maximum of one hundred
10 thousand dollars (\$100,000) per incident.

11
12
13 **All matter omitted in this version of the**
14 **bill appears in the bill as amended in the**
15 **Assembly, June 26, 2003 (JR 11)**
16
17

